IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 497 OF 2007

Bare Chandrakant Rajaram.... Petitioner

versus

The Principal
Dr. D.Y. Patil Arts ,Commerce
and Science College & ors ..... Respondent.

Mr. B.P.Apte Sr. advocate i/b.Smt. Anjali Halekar for the petitioner.
Shri S.S. Kanetkar for Respondents 1 and 2.
Shri S.K.Chincholikar AGP for Respondent no.3.

CORAM; A.P. DESHPANDE, J.
DATED; 30TH MARCH, 2007

P.C.;

1. The present petitioner was working as full time lecturer with respondent no.1 college and teaching subject of accountancy. The petitioner is a Chartered Accountant registered with the Institute of Chartered Accountant of India. As the pay bill submitted by the respondent, claiming salary grants of the petitioner came to be rejected, the petitioner was served with a show cause notice, calling upon him to explain as to whether a full time teacher working in a college can carry on full time profession of Chartered Accountant under the statutes of the University. The petitioner replied to the show cause notice by stating that the

institute of Chartered Accountant has permitted him to work as such. However, when the Government declined to reimburse the college, by paying salary grants to the petitioner, the college took a decision to terminate the service of the petitioner, and aggrieved by the said decision, the petitioner had filed an appeal before the College Tribunal. The college tribunal found that the university statute which regulates the service conditions of the employees of the affiliated college, does not permit a full time employee or part time or full time lecturer from undertaking any other employment or profession including private tuitions and coaching classes which are likely to interfere with their professional responsibilities. As the tribunal found that the petitioner could not have engaged in a full time profession of Chartered Accountant, it has dismissed the appeal and being dis-satisfied with the judgment and order passed by the tribunal this writ petition has been filed.

2. Two fold submissions are made by the learned counsel for the petitioner: (1) that the tribunal has referred to the statutes to hold that the statute refrain the petitioner from undertaking any other employment or profession when there are no statutes to that effect, and (2) that the termination is illegal

on account of failure to hold an enquiry touching the act of misconduct.

3. So far as the first submission is concerned, it is more technical than substantial in as much as on account of absence of statutes regulating the service conditions, the Vice Chancellor has issued directions laying down the service conditions and the same is done in exercise of powers under section 11(6)(b) of the Pune University Act. The said directions are equally binding as are the statutes.

4. Perusal of the relevant direction reveals that the teachers shall refrain from undertaking any other employment and commitment including private tuitions and coaching classes which are likely to interfere with their professional responsibilities. Relying on the language used in the direction, the learned counsel for the petitioner has canvassed that having regard to the timing of the college and the profession undertaken by the petitioner, his carrying on the profession of Chartered Accountancy did not interfere with the professional responsibility. The question is not as to whether as a matter of fact undertaking of any other job interferes with the professional responsibilities but the test is as to whether is it likely to interfere with the professional

responsibilities, and it is for the college authorities to decide as to whether there is likelihood of interference with the professional responsibilities. As the respondent no.1 was of the view that the petitioners' full time practice as Chartered Accountant interferes with the professional responsibilities as a full time lecturer, it has taken a decision to terminate with the service. No fault can be found with the same.

5. Turning to the other contention that the impugned order is bad in law and it suffers from breach of principles of natural justice in as much as no enquiry was conducted. Having regard to the facts of the present case there was no need to conduct the enquiry for the reason that the facts are admitted in as much as the fact that the petitioner was carrying on profession as a full time Chartered Accoutnant when he had accepted a full time teaching assignment as a lecturer in college is an admitted fact. If this fact is admitted what is to be seen is as to whether is it permissible to do so under the relevant rules framed under the directions issued by the Vice Chancellor.

6. I am of the clear view that carrying on full time employment and full time profession simultaneously is impermissible under direction IV(ii) and more so when

the college management feels that the same is likely to interfere with the professional responsibilities. As the facts were not in dispute, the enquiry would have been futile. In the present fact situation there was no need to enquire into any factual aspect. The decision cannot be said to have been vitiated on account of failure to hold an enquiry. In the result, there being no merit in the writ petition, the same is dismissed.

7. By the order impugned before the tribunal not only the petitioner was terminated from service but was also called upon to repay the amount of salary which the college had paid to the petitioner. From the record, it is obvious that the petitioner had not suppressed any fact and has not misrepresented the college in any manner and as such there was no justification for the respondent no.1 to demand refund of the salary already paid, more so when the petitioner has actually worked during the said period. In all fairness the respondent no.1 on instructions from his client, who is present before the court, submits that the respondent no.1 will not insist for refund of the salary paid to the petitioner and will not proceed to recover the same. In this view of the matter, the grievance of the petitioner in regard to recovery does not survive and petition is dismissed

summarily.

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